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ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

In the Matter of the Revocation of the Mortgage
Broker License of:

No. 09F-BD035-BNK

SUNRISE FINANCIAL, INC.
3050 North Navajo Drive, Suite 101
Prescott Valley, AZ 86314

NOTICE OF HEARING AND COMPLAINT

Respondent.

PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative Hearings, an independent agency, and is scheduled for December 2, 2008 at 9:00 a.m., at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602) 542-9826 (the "Hearing").

The purpose of the Hearing is to determine whether grounds exist to suspend or revoke Respondent's mortgage broker license; to order any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage brokers in Arizona pursuant to A.R.S. §§ 6-123 and 6-131; and to impose a civil money penalty pursuant to A.R.S. § 6-132.

Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied or expressed, to the Director of the Office of Administrative Hearings or the director's designee to preside over the Hearing as the Administrative Law Judge, to make written recommendations to the Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office of Administrative Hearings has designated Thomas Shedden at the address and phone number listed above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law Judge is specifically prohibited from entering.

1 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**
2 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue
3 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of
4 Administrative Hearings.

5 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by
6 counsel, or to proceed without counsel when submitting evidence, to have a reasonable opportunity
7 to inspect all documentary evidence, to cross-examine witnesses, to present evidence and witnesses
8 in support of his/her interests, and to have subpoenas issued by the Administrative Law Judge to
9 compel attendance of witnesses and production of evidence. Pursuant to A.R.S. § 41-1092.07(B),
10 any person may appear on his or her own behalf or by counsel.

11 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be
12 made by a court reporter or by electronic means. Any party that requests a transcript of the
13 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

14 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant
15 Attorney General Craig A. Raby, (602) 542-8889, 1275 West Washington, Phoenix, Arizona 85007.

16 **NOTICE OF APPLICABLE RULES**

17 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")
18 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting
19 forth the rules of practice and procedure applicable in contested cases and appealable agency actions
20 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules
21 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through
22 R2-19-122. A copy of these rules is enclosed.

23 Pursuant to A.A.C. R20-4-1209, Respondent shall file a written answer **within twenty (20)**
24 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Respondent's
25 position or defense and shall specifically admit or deny each of the assertions contained in this
26 Notice of Hearing. If the answering Respondent is without or is unable to reasonably obtain

1 knowledge or information sufficient to form a belief as to the truth of an assertion, Respondent shall
2 so state, which shall have the effect of a denial. Any assertion not denied is deemed admitted.
3 When Respondent intends to deny only a part or a qualification of an assertion, or to qualify an
4 assertion, Respondent shall expressly admit so much of it as is true and shall deny the remainder.
5 Any defense not raised in the answer is deemed waived.

6 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Respondent will be**
7 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as
8 true and admitted and the Superintendent may take whatever action is appropriate, including
9 suspension or revocation of Respondent's license and imposition of a civil penalty or restitution to
10 any injured party.

11 Respondent's answer shall be mailed or delivered to the Arizona Department of Financial
12 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or
13 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
14 Arizona 85007 and to Assistant Attorney General Craig A. Raby, Consumer Protection & Advocacy
15 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

16 **Persons with disabilities may request reasonable accommodations such as interpreters,**
17 **alternative formats, or assistance with physical accessibility.** Requests for special
18 accommodations must be made as early as possible to allow time to arrange the accommodations. If
19 accommodations are required, call the Office of Administrative Hearings at (602) 542-9826.

20 COMPLAINT

21 1. Respondent Sunrise Financial Inc. ("Sunrise") is authorized to transact business in Arizona
22 as a mortgage broker, license number MB 0014336, within the meaning of A.R.S. §§ 6-901, *et seq.*
23 The nature of Sunrise's business is that of making, negotiating, or offering to make or negotiate
24 loans secured by Arizona real property, within the meaning of A.R.S. § 6-901(6).

25 2. An October 22, 2007, examination of Sunrise, conducted by the Department, revealed that
26 Sunrise:

- 1 a. Failed to conduct the minimum elements of reasonable employee investigations prior
2 to hiring employees, specifically:
- 3 i. Respondent failed to consult with the applicant's most recent or next most recent
4 employer ("EI") before hiring seven (7) employees;
- 5 ii. Respondent failed to inquire regarding an applicant's qualifications and
6 competence for the position ("QI") before hiring seven (7) employees;
- 7 iii. Respondent failed to obtain a completed, signed, and properly dated Employment
8 Eligibility Verification Form ("I9") before hiring seven (7) employees;
- 9 iv. Respondent failed to obtain the I9 Documents before hiring one (1) employee;
- 10 v. Respondent failed to obtain a current credit report from a credit reporting agency
11 ("CR") before hiring three (3) employees;
- 12 vi. Respondent failed to obtain an explanation for derogatory credit before hiring
13 four (4) employees; and
- 14 vii. Respondent failed to correct this violation from its previous examination on three
15 other occasions;
- 16 b. Failed to reconcile and update records on a monthly basis;
- 17 i. Respondent failed to provide documentation to show that its bank accounts have
18 been reconciled since its accountant could not provide a general ledger and its
19 check register has not been updated to show balances; and
- 20 ii. Respondent failed to correct this violation from its previous examination;
- 21 c. Allowed borrowers to sign regulated documents containing blank spaces without
22 completing an authorization form to do so, specifically:
- 23 i. Respondent consistently has the borrower sign the Authorization to Complete
24 Blank Spaces disclosure indicating the application and regulatory disclosures are
25 being signed with blank spaces and does not indicate specifically what blank
26 spaces are to be completed;

- 1 d. Failed to comply with the disclosure requirements of Title I of the Consumer Credit
2 Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement
3 Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated
4 under these acts, specifically:
- 5 i. Respondent failed to disclose the Yield Spread Premium ("YSP") on the Good
6 Faith Estimate ("GFE") to one (1) borrowers;
 - 7 ii. Respondent failed to provide updated Servicing Transfer ("ST") disclosures to
8 one (1) borrower; and
 - 9 iii. Respondent failed to provide GFE, ST and Truth in Lending ("TIL") disclosures
10 within three (3) business days to one (1) borrower;
- 11 e. Failed to use an independent source when providing a value opinion to private
12 investors, specifically:
- 13 i. Respondent's file did not contain a copy of the Note and Deed of Trust on one
14 (1) borrower;
 - 15 ii. Respondent's file did not contain the Value Opinion involving two (2)
16 borrowers;
 - 17 iii. Respondent failed to provide a disclosure to private investors, when it has used
18 private investors to fund mortgage loans; and
 - 19 iv. Respondent failed to correct this violation from its previous examination;
- 20 f. Failed to provide a statement attesting to the validity of information provided and
21 failed to receive acknowledgment from the private investors of the receipt of this
22 information, specifically:
- 23 i. Respondent failed to correct this violation from its previous examination;
- 24 g. Failed to maintain a positive net worth position, specifically:
- 25 i. Respondent's financial statement indicates a negative net worth position;
- 26 h. Failed to maintain correct and complete trust subsidiary ledgers/verification,

1 specifically:

2 i. Respondent's trust account subsidiary ledger does not contain all the required
3 information on the borrower's funds; and

4 ii. Respondent failed to verify each trust balance to each trust subsidiary ledger at
5 each reconciliation; and

6 i. Failed to use a statutorily correct written fee/document agreement signed by all
7 parties, specifically:

8 i. Respondent failed to maintain a statutorily correct written agreement in the loan
9 files of at least two (2) borrowers; and

10 ii. Respondent failed to correct this violation from its previous examination.

11 3. Based on the above findings, the Department issued and served upon Respondent a Notice of
12 Assessment on March 10, 2008.

13 4. A copy of the Department's Report of Examination ("Report") accompanied the Notice of
14 Assessment served upon Respondent. Page sixteen (16) of the Report states, "Within 30 days of the
15 cover letter accompanying this report of examination, [Respondent] must advise the Superintendent
16 of the actions taken to correct the violations of laws, and the measures implemented to prevent future
17 violations."

18 5. The cover letter which accompanied the Report was dated March 10, 2008. Given five (5)
19 days for mailing time, plus the thirty (30) day deadline Respondent's final date to respond to the
20 Superintendent's request for a response to the examination report was April 15, 2008.

21 6. Chris Dunshee ("Mr. Dunshee"), the Department's examiner in charge of Respondent's
22 examination, contacted Respondent by telephone on the following dates: May 6, 2008, and July 18,
23 2008. Throughout that time period, Mr. Dunshee spoke with Respondent on two (2) occasions.
24 During the first telephone conversation, Mr. Dunshee explained the importance of responding to the
25 Superintendent's request for information. Respondent said he would provide a response to the
26 examination report and pay the exam fee.

7. On or about May 23, 2008, Respondent wrote a letter to Robert Charlton, Assistant Superintendent at the Department, and advised that he would like an informal settlement conference. The Respondent also wanted to set up a payment plan for the civil monetary penalty "cmp". On this request he also said the department should be in receipt of full payment for the examination fee by May 29, 2008.

8. On or about July 18, 2008, Mr. Dunshee spoke again to the Respondent about the lack of payment of the exam fee, not receiving a response to the exam and not receiving payment of the cmp. The Respondent was informed that the Department would be moving to the next step and that he needed to comply. The Respondent said he did not have the money, because some of his closings had not taken place as he expected. Mr. Dunshee explained the consequences to him again. To date, the Department has not received the requested response to Sunrise's examination report, nor has the Department received payment of the exam fee, or payment of the cmp.

LAW

1. Pursuant to A.R.S. §§ 6-901, *et seq.*, the Superintendent has the authority and duty to regulate all persons engaged in the mortgage broker business and with the enforcement of statutes, rules and regulations relating to mortgage brokers.

2. By the conduct set forth in the Complaint, Sunrise Financial, Inc. has violated the mortgage broker statutes and rules as follows:

- a. A.R.S. § 6-903(N) and A.A.C. R20-4-102, by failing to conduct the minimum elements of reasonable employee investigations prior to hiring employees;
- b. A.A.C. R20-4-917(C) by failing to update and reconcile records;
- c. A.R.S. § 6-909(A) and A.A.C. R20-4-921, by allowing borrowers to sign regulated documents containing blank spaces without completing an authorization form to do so;
- d. A.R.S. § 6-906(D) and A.A.C. R20-4-917(B)(6)(e), by failing to comply with the disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C.

1 §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§
2 2601 through 2617), and the regulations promulgated under these acts;

3 e. A.R.S. § 6-907(A) and A.A.C. R20-4-917(B)(6), by failing to use an independent
4 source when providing a value opinion to private investors;

5 f. A.R.S. § 6-907(B), by failing to provide a statement attesting to the validity of
6 information provided and failed to receive acknowledgment from the private
7 investors of the receipt of this information;

8 g. A.R.S. § 6-905(A), by failing to maintain a positive net worth position;

9 h. A.A.C. R20-4-917(B)(5) and A.A.C. R20-4-917(C), by failing to update, verify and
10 reconcile records;

11 i. A.R.S. § 6-906(C), by failing to use a statutorily correct written fee/document
12 agreement signed by all parties; and

13 j. A.R.S. §§ 6-123(3) and 6-124, by the failure of Respondent to timely respond to the
14 Superintendent's request for information.

15 3. Respondent's failure to respond to a request for information from the Superintendent
16 constitutes violations of A.R.S. §§ 6-124 and 6-123(3), which constitute grounds to suspend or
17 revoke the mortgage broker license of Sunrise Financial, Inc., number MB 0014336, pursuant to
18 A.R.S. § 6-905(A)(4).

19 4. The violations of applicable laws, set forth above, constitute grounds to suspend or revoke
20 Respondent's mortgage broker license, pursuant to A.R.S. § 6-905(A)(3)(4).


21 5. The violations, set forth above, constitute grounds for the pursuit of any other remedy
22 necessary or proper for the enforcement of statutes and rules regulating mortgage brokers in Arizona
23 pursuant to A.R.S. §§ 6-123 and 6-131.

24 6. Pursuant to A.R.S. § 6-132, Respondent's violations of the aforementioned statutes are
25 grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for
26 each day.

1
2
3 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the
4 above-described violations or other grounds for disciplinary action, the Superintendent may suspend
5 or revoke Sunrise Financial, Inc.'s mortgage broker license pursuant to A.R.S. § 6-905(A); order any
6 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage
7 brokers in Arizona under A.R.S. §§ 6-123 and 6-131; and impose a civil money penalty pursuant to
8 A.R.S. § 6-132.

9
10 DATED this 20th day of October, 2008.

11 Felecia A. Rotellini
12 Superintendent of Financial Institutions

13
14 By 
15 Robert D. Charlton
16 Assistant Superintendent of Financial Institutions

17 ORIGINAL of the foregoing filed this 20th
18 day of October, 2008, in the office of:

19 Felecia A. Rotellini
20 Superintendent of Financial Institutions
21 Arizona Department of Financial Institutions
22 ATTN: Susan L. Longo
23 2910 N. 44th Street, Suite 310
24 Phoenix, AZ 85018

25 COPY of the foregoing mailed/delivered same date to:
26 Thomas Shedden
Administrative Law Judge
Office of the Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ 85007

1 Craig A. Raby
2 Assistant Attorney General
3 Office of the Attorney General
4 1275 West Washington
5 Phoenix, AZ 85007

6 Robert D. Charlton, Assistant Superintendent
7 Chris Dunshee, Senior Examiner
8 Arizona Department of Financial Institutions
9 2910 N. 44th Street, Suite 310
10 Phoenix, AZ 85018

11 AND COPY MAILED SAME DATE by
12 Regular Mail, Certified Mail, Return Receipt Requested, and
13 SERVED SAME DATE by Process Server, to:

14 Sunrise Financial, Inc.
15 c/o James R. Tift, President/CEO,
16 and Statutory Agent
17 3050 North Navajo Drive, Suite 101
18 Prescott Valley, AZ 86314
19 Respondent

20 Sunrise Financial, Inc.
21 c/o James R. Tift, President/CEO
22 1809 N. Moonstone Lane
23 Prescott, AZ 86301
24 Respondent

25 By: 
26 PHX-AGN-2008-0570; 279005